

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION**

**EVELIA FERNANDEZ  
MURILLO,**

*Plaintiff,*

**V.**

**SUNLAND PARK MALL, LLC,  
AND SCHINDLER ELEVATOR  
CORPORATION,**

***Defendants.***

[illegible]

**CIVIL ACTION NO. 3:22-cv-85**  
**JURY DEMANDED**

**DEFENDANTS SUNLAND PARK MALL, LLC, AND SCHINDLER  
ELEVATOR CORPORATION’S NOTICE OF REMOVAL**

COME NOW, Defendants Sunland Park Mall, LLC (“Sunland”) and Schindler Elevator Corporation (“Schindler”) (hereinafter collectively referred to as “Defendants”), and remove the above-captioned case, in accordance with 28 U.S.C. §§ 1332, 1441, and 1446, from the 346<sup>th</sup> Judicial District Court of El Paso County, Texas, to the United States District Court for the Western District of Texas, El Paso Division. Defendants would respectfully show this Court as follows:

**I.**  
**GROUND FOR REMOVAL**

1. Removal of this matter is proper, and federal jurisdiction exists, because it involves parties with diverse citizenship and the amount in controversy exceeds \$75,000.00. Defendants have complete diversity of citizenship from Plaintiff, and removal of this case is proper.

**II.**  
**BACKGROUND AND PROCEDURAL HISTORY**

2. According to Plaintiff's Original Petition, this lawsuit involves an incident which occurred on or about February 6, 2020, while Plaintiff was riding an escalator at Sunland's premises that was maintained by Schindler. Plaintiff purportedly fell and was injured when the escalator suddenly stopped. She filed suit in El Paso County District Court on January 31, 2022, asserting a cause of action of negligence against Schindler, and causes of action of both negligence and premises liability against Sunland.

3. On information and belief, Plaintiff is a citizen of Texas, residing in Bexar County, Texas.<sup>1</sup> Defendant Sunland is a foreign corporation whose principal place of business is located at 225 W. Washington Street, Indianapolis, Indiana

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<sup>1</sup> Exhibit 1: Plaintiff's Original Petition, ¶ 2.

46204.<sup>2</sup> Defendant Schindler is a foreign corporation whose principal place of business is located at 20 Whippany Road, Morristown, New Jersey 07960.<sup>3</sup>

4. Schindler's registered agent for service of process received the citation and a copy of Plaintiff's Original Petition on February 11, 2022.<sup>4</sup> Sunland's registered agent for service of process also received the citation and a copy of Plaintiff's Original Petition on February 11, 2022.<sup>5</sup>

### **III. REMOVAL IS TIMELY**

5. The notice of removal is timely pursuant to 28 U.S.C. § 1446(b) because it is filed within 30 days of February 11, 2022, the date Defendants were served with summons and copies of Plaintiff's Original Petition, and within one year from when Plaintiff commenced the state court action.

### **IV. DIVERSITY JURISDICTION EXISTS FOR ALL PROPER PARTIES**

6. Under 28 U.S.C. § 1441(a), "any civil action brought in a state court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is

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<sup>2</sup> *Id.* at ¶ 3.

<sup>3</sup> *Id.* at ¶ 4.

<sup>4</sup> Exhibit 4: Return of Citation served on Defendant Schindler Elevator Corporation.

<sup>5</sup> Exhibit 5: Return of Citation served on Defendant Sunland Park Mall, LLC.

pending.”<sup>6</sup> Further, pursuant to 28 U.S.C. § 1332(a), district courts have “original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between . . . citizens of different States.”<sup>7</sup>

**A. Diversity of citizenship exists between the parties.**

7. Federal jurisdiction exists in this case because the parties are completely diverse. 28 U.S.C. §§ 1441(a), 1332. Plaintiff is a citizen of Texas, residing in Bexar County, Texas.<sup>8</sup>

8. Defendant Sunland was, at the time of the commencement of this action and at present time, an Indiana limited liability company with its sole member being WP Centers REIT 10, LLC, which is a Delaware entity with its principal place of business located in Columbus, Ohio. The citizenship of an LLC is determined by the citizenship of its members. *See Am. Motorists Inc. Co. v. Am. Emp. Ins. Co.*, 600 F.2d 15, 16 (5<sup>th</sup> Cir. 1979); *Harvey v. Grey Wolf Drilling Co.*, 542 F.3d 1077, 1080 (5<sup>th</sup> Cir. 2008). As such, Defendant Sunland is a citizen of the states of Delaware and Ohio.

9. Defendant Schindler was, at the time of the commencement of this action and at the present time, a corporation organized and duly incorporated under

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<sup>6</sup>28 U.S.C. § 1441(a).

<sup>7</sup>28 U.S.C. § 1332(a).

<sup>8</sup> Exhibit 1: Plaintiff’s Original Petition.

the laws of the State of Delaware with its principal place of business located in the State of New Jersey. 28 U.S.C. § 1332(c)(1), “a corporation shall be deemed to be a citizen of a State by which it has been incorporated and of the State where it has its principal place of business.” As such, Defendant Schindler is a citizen of the states of Delaware and New Jersey.

**B. The amount in controversy exceeds \$75,000.00.**

10. Plaintiff’s damage claims also meet the amount in controversy requirement for diversity jurisdiction under 28 U.S.C. § 1332(b). The amount in controversy is the estimate of damages that will be put at issue, not the amount Plaintiff will actually recover.<sup>9</sup> Under Texas Rule of Civil Procedure 47, a plaintiff is required to plead one of the statutorily-prescribed ranges of damages.<sup>10</sup> In this matter, Plaintiff pled that she seeks in excess of \$1,000,000.00 in damages.<sup>11</sup> As such, from the face of the petition, the amount in controversy plainly exceeds \$75,000.

**VI.  
PROCEDURAL REQUIREMENT FOR REMOVAL**

11. Venue for this removal is proper under 28 U.S.C. § 1441(a) because this Court is the United States District Court for the district and division

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<sup>9</sup>*S.W.S. Erectors, Inc. v. Infax, Inc.*, 72 F.3d 489, 491 (5<sup>th</sup> Cir. 1996).

<sup>10</sup>TEX. R. CIV. P. 47.

<sup>11</sup>Exhibit 1, Plaintiff’s Original Petition.

corresponding to the place where the state court action was pending – El Paso County.

12. Simultaneously with the filing of this Notice of Removal, a copy of this Notice of Removal has been served on all parties and forwarded for filing with the Clerk of the District Court of El Paso County, Texas, Case No. 2022DCV0340, *Evelia Fernandez Murillo v. Sunland Park Mall, LLC, and Schindler Elevator Corporation*, in the District Court of El Paso County, Texas, 346<sup>th</sup> Judicial District Court in accordance with 28 U.S.C. § 1446(d).

## **VII. PAPERS FROM THE REMOVED ACTION**

13. Pursuant to 28 U.S.C. § 1446(a), the following documents are attached to this Notice of Removal:

- Exhibit 1: Plaintiff's Original Petition
- Exhibit 2: Defendant Sunland Park Mall, LLC's Special Exceptions and Original Answer
- Exhibit 3: Defendant Schindler Elevator Corporation's Special Exception and Original Answer
- Exhibit 4: Return of Citation served on Defendant Schindler Elevator Corporation
- Exhibit 5: Return of Citation served on Defendant Sunland Park Mall, LLC
- Exhibit 6: Civil Cover Sheet

Exhibit 7: Supplemental Civil Cover Sheet

Exhibit 8: Index of Matters Being Filed

Exhibit 9: List of All Counsel of Record and Parties Represented

14. Defendants reserve the right to amend or supplement this Notice of Removal.

### **VIII. JURY DEMAND**

15. Plaintiff made a jury demand in the state court action. Defendants hereby request a trial by jury.

### **IX. CONCLUSION**

16. This state court action may be removed to this Court by Defendants in accordance with provisions of 28 U.S.C. § 1441(a) because (1) this action is a civil action pending within the jurisdiction of the United States District Court for the Western District of Texas, El Paso Division; (2) the parties to this action are citizens of different states; and (3) the amount in controversy exceeds \$75,000.00, exclusive of interests and costs.

WHEREFORE, PREMISES CONSIDERED, Defendants pray for removal of the above entitled and numbered cause from the 346<sup>th</sup> Judicial District Court of El Paso County, Texas to this Honorable Court.

Respectfully Submitted,

**JOHNSON, TRENT & TAYLOR, L.L.P.**

By: /s/ T. Christopher Trent

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**ATTORNEYS FOR DEFENDANTS  
SUNLAND PARK MALL, LLC, AND  
SCHINDLER ELEVATOR  
CORPORATION**

**CERTIFICATE OF SERVICE**

I hereby certify that on this **14<sup>th</sup> day of March, 2022**, a true and correct copy of the foregoing document was forwarded to all counsel of record.

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**Via eFile**

/s/ T. Christopher Trent

T. Christopher Trent



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